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Permanent Forum on Indigenous Issues
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Follow-up to the recommendations of the Permanent Forum

Analysis prepared by the secretariat of the United Nations Permanent Forum on Indigenous Issues: economic and social development, the environment and free, prior and informed consent

Summary

The present report provides an analysis of the implementation of the recommendations of the Permanent Forum on Indigenous Issues on economic and social development, the environment and free, prior and informed consent, based on reports received from Governments, United Nations agencies, intergovernmental bodies, non-governmental organizations and indigenous peoples' organizations.

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I. Introduction

1. The present report seeks to provide an analysis of the implementation of the recommendations of the Permanent Forum on Indigenous Issues reached at its second to the eighth sessions on economic and social development, the environment and free, prior and informed consent. The analysis is based on reports received from Governments, United Nations agencies and other intergovernmental bodies, non-governmental organizations and indigenous peoples' organizations. While the report does not constitute a global analysis of the economic and social situation of indigenous peoples around the world, of the environmental issues confronting them, or of the concept and practices of free, prior and informed consent, it provides information on the consideration and implementation of those at the international and national levels.

II. Analysis of the recommendations of the Permanent Forum

A. Economic and social development

2. At its eighth session, held in 2009, the Permanent Forum conducted the first review of its recommendations under the mandated area of economic and social development. At the session, the secretariat of the Permanent Forum had prepared an analysis of the recommendations and their implementation status. Given that only two years have passed since the previous analysis, most of the findings remain valid today.

3. In broad terms, the recommendations made by the Permanent Forum at its first seven sessions focused on issues relating to the Millennium Development Goals, urban indigenous peoples and migration as well as indicators, data collection and disaggregation. During those sessions, the Permanent Forum also consistently made recommendations to the United Nations system and Member States on changing paradigms and approaches to development, and the analysis undertaken by the secretariat reflected that focus.

Recommendations made by the Permanent Forum at its eighth session

4. In its review of the recommendations on economic and social development, the Permanent Forum realized that it had made very few recommendations addressing the activities of the private sector in general and transnational corporations in particular and the impact of their activities on indigenous peoples. Accordingly, the Permanent Forum recommended that business enterprises set minimum standards of conduct in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization (ILO) Convention No. 169 of 1989 on indigenous and tribal peoples. The Permanent Forum indicated its support for the work of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises and recommended that the Secretary-General urge States to comply with the Declaration. Understanding that the principles of the Declaration are not always

observed, the Permanent Forum also recommended that States establish effective grievance mechanisms.

Recommendations made by the Permanent Forum at its ninth session

5. The special theme for the ninth session of the Permanent Forum was "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples". The Permanent Forum emphasized the role that the Declaration played in affirming indigenous peoples' rights and aspirations and called upon the United Nations system to financially support the efforts of indigenous peoples in consolidating their own development models, concepts and practices.

6. The recommendations from the ninth session clearly demonstrate that indigenous peoples' development is intimately linked with education, and in that regard the Permanent Forum recommended that the United Nations Educational, Scientific and Cultural Organization (UNESCO) and other United Nations agencies convene an expert group meeting on themes and concepts related to bilingual, intercultural and multilingual education and conduct country-specific research on those issues. International financial institutions were also encouraged to have policies in place to support, protect and preserve indigenous languages.

7. The Permanent Forum emphasized the importance of indigenous knowledge systems and identified a host of ongoing international processes that should recognize and integrate indigenous knowledge systems in their work. The Permanent Forum also made recommendations to the United Nations Development Programme (UNDP) regarding the need to strengthen indigenous peoples' participation in the Millennium Development Goals review processes and in its democratic governance programme. The Forum emphasized and reiterated its previous recommendations on the Millennium Development Goals in the light of the Millennium Development Goals summit held in 2010.

8. The Permanent Forum made five recommendations on indigenous peoples and corporations, calling upon States to implement recommendations from the Special Rapporteur on the rights of indigenous peoples and the Special Representative of the Secretary-General on business and human rights. The Permanent Forum specifically mentioned the need for States to review policies on biofuel industries, which are causing deforestation and the displacement of indigenous peoples. The Permanent Forum expressed its desire for cooperation with the Special Representative of the Secretary-General on business and human rights and the United Nations Global Compact on engaging with the private sector on issues related to indigenous peoples.

Progress in implementation of recommendations

9. There has been some progress in the past two years. In particular, there has been progress in terms of States and the United Nations system recognizing indigenous peoples' rights. How well such improved recognition has translated into effective change on the ground is beyond the scope of the present report. Nevertheless, roughly three quarters of the Permanent Forum's 173 recommendations on economic and social development have either been completed or are in progress (see table 1). The secretariat of the Permanent Forum has limited resources to verify the information received and does not analyse the effectiveness

of the actions taken. Thus, the high implementation rate provides little information on the effectiveness of the implementation. Nevertheless, an implementation rate of almost 75 per cent does, at the very least, indicate that the Permanent Forum's recommendations are being heeded.

Table 1
Implementation of the recommendations of the Permanent Forum on economic and social development

	Recommendations		
Permanent Forum session	*Total made*	*Implemented (ongoing or completed)*[a]	*Not yet implemented or reporting not received*
Third	13	8	5
Fourth	47	35	12
Fifth	33	33	—
Sixth	32	23	9
Seventh	30	22	8
Eighth	18	8	10
Total	**173**	**129**	**44**

[a] A recommendation is noted as being implemented even if only a single State or agency reports to the Permanent Forum as having acted upon it.

10. The Office of the United Nations High Commissioner for Human Rights (OHCHR), ILO, the secretariats of the Convention on Biological Diversity and the Permanent Forum and other United Nations agencies are closely following up the recommendations of the Permanent Forum on indicators and data collection/disaggregation. In response to a recommendation made at the eighth session, ILO, OHCHR and the secretariat of the Permanent Forum organized a technical expert meeting on indicators of the well-being of indigenous peoples. The report of that meeting includes proposals on the development of indicators based on an OHCHR approach to identify structural, process and outcome indicators that capture the collective aspects of indigenous peoples' rights. That approach will inform the work of the Permanent Forum as well as other supervisory mechanisms, such as United Nations treaty monitoring bodies, United Nations specialized mechanisms, the ILO supervisory system and other international instruments/processes relevant to indigenous peoples.

11. The Permanent Forum has consistently recommended that United Nations agencies and other international organizations establish a specific policy on working with indigenous peoples. The International Fund for Agricultural Development (IFAD) finalized its policy on engagement with indigenous peoples in 2009, and the Food and Agriculture Organization of the United Nations (FAO) adopted its policy on indigenous and tribal peoples in 2010, joining other agencies such as UNDP, the World Bank, the Asian Development Bank, the Inter-American Development Bank, the European Bank for Reconstruction and Development and the United Nations Human Settlements Programme (UN-Habitat), all of which also have specific policies on indigenous peoples.

12. The outcome document of the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals (General Assembly resolution 65/1) makes six references to indigenous peoples, including with regard to participation in human rights and non-discrimination, to the right to full employment, to food security and to forest management. In paragraph 55 of the outcome document, the General Assembly also reaffirms that States should take concerted, positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination. The United Nations Millennium Declaration made no references to indigenous peoples. It is clear, therefore, that although States have increased their commitments to indigenous peoples, there is still a need to address the implementation gap.

13. Although the implementation of the Permanent Forum's recommendations regarding the Millennium Development Goals has been limited at the national level, progress can be seen in capacity-building projects undertaken by the United Nations system, government agencies and indigenous peoples. With support from IFAD, the secretariat of the Permanent Forum has developed a training module based on the United Nations Development Group guidelines on indigenous peoples issues (February 2008) for the purpose of implementing the United Nations Declaration. Training workshops have been held for United Nations country teams in Bolivia (Plurinational State of), Cambodia, Ecuador, Guyana, Nepal and the Philippines.

B. Environment

14. Indigenous peoples have an important relationship with the land. The natural environment has provided indigenous peoples with the means for survival since their spiritual beliefs are connected to the plants, animals, waters and places they have inhabited since time immemorial. The environment is one of the six substantive mandated areas of the Permanent Forum and covers a range of issues, including land rights, land use, natural resources, water, oceans, wetlands, fishing, climate change, forests, desertification, pollution, traditional knowledge and access and benefit-sharing. One of the focuses of the 2012 United Nations Conference on Sustainable Development (Rio+20) and the Green Economy Initiative is to strengthen the framework for environmental sustainability, which is also Goal 7 of the Millennium Development Goals. Hence, environmental issues continue to be linked to sustainability and to means for alleviating poverty in the world.

15. Environmental issues are also incorporated in a number of articles in the United Nations Declaration on the Rights of Indigenous Peoples, specifically in relation to lands, territories and resources. Articles 25 to 32 outline the rights of indigenous peoples in relation to maintaining and strengthening their spiritual relationship with lands, territories and resources, including the right to own, develop and control their lands, to conserve and protect the environment and the production capacity of lands, to determine development on their lands and to maintain, control, protect and develop their cultural heritage and traditional knowledge and the knowledge of the properties of fauna and flora. The articles also specifically address such issues as the need for States to give due recognition to indigenous peoples' laws, traditions and customs and land tenure systems; restitution for land, territories and resources confiscated, taken or occupied; and States taking effective measures to ensure that there is no storage of hazardous materials or disposal of such

materials in the lands and territories of indigenous peoples without the free, prior and informed consent of indigenous peoples.

16. At its second to eighth sessions, the Permanent Forum made recommendations on the environment to cover a range of environmental issues such as climate change, traditional knowledge, access and benefit-sharing, land tenure, conservation, pollution, water, forests, fishing, renewable energy, reindeer herding, indicators, and the participation of and policies on indigenous peoples.

Water

17. The Permanent Forum made 10 recommendations on water; while some of the recommendations related to the access by indigenous peoples to water, there was concern about the privatization of water, a natural resource that is sacred to indigenous peoples and is central to all life. At its sixth session, the Permanent Forum requested the support of United Nations agencies in the planning and development of a world indigenous forum on the right to water, which should also include an examination of the cultural and spiritual dimensions of water. Other recommendations ranged from the impact of river diversions for development projects as well as the compliance by States under the Convention on the Rights of the Child in recognizing the basic rights of all children to nutritional food and access to clean water (see E/2003/43, para. 73). Recommendations also requested position papers on the relationship between access to water services, sanitation and human settlements and the consideration of indigenous peoples' Kyoto Water Declaration made at the World Water Forum in Japan in 2003. While many of the recommendations have yet to be implemented, some Governments did report on addressing priority water needs for indigenous peoples and their communities, including the provision of basic infrastructure for guaranteeing access to water and the implementation of water management strategies. The Permanent Forum also applauded the recognition by the Human Rights Council of the right to water as a human right. At its ninth session, the Permanent Forum decided to hold a half-day discussion at its tenth session, in 2011, on the theme "The right to water and indigenous peoples" (see E/2010/43, para. 129).

Toxic waste and persistent organic pollutants

18. At its second session, held in 2003, the Permanent Forum made recommendations to States to ratify the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, the Stockholm Convention on Persistent Organic Pollutants and other conventions relating to toxic waste, persistent organic pollutants and mercury contamination. The Stockholm Convention entered into force in May 2004 and targets 12 hazardous pesticides and industrial chemicals. The Permanent Forum also made recommendations to States to control the pollution of river and streams and to clean up rivers and streams that had already been polluted. At the sixth session, held in 2009, the Permanent Forum welcomed an invitation by the Russian Federation to hold an expert group meeting in Khabarovsk, Russian Federation, on indigenous peoples and the environment. The expert meeting was held in August 2007 and focused on pollution. The report of the expert group meeting is available from the website of the Permanent Forum.[1]

[1] http://www.un.org/esa/socdev/unpfii/en/workshopIPPE.html.

Traditional knowledge and access and benefit-sharing

19. Recommendations on protecting indigenous peoples' traditional knowledge continues to be a major focus, especially the effects of commercialization and bioprospecting of genetic resources on indigenous peoples' lands and territories. The recommendations were largely focused towards studies and reports to analyse the use of traditional knowledge relating to medicinal plants and the commercialization of such knowledge. Recommendations were also made on recognizing the unique contribution of indigenous women in possessing and transmitting traditional knowledge as well as on considering indigenous peoples' issues in the lead-up to the negotiation and elaboration of an international regime on access and benefit-sharing. The establishment of an international code on bioprospecting as a means to avoiding biopiracy and to ensuring respect for indigenous peoples' cultural and intellectual property, and the development of sui generis laws were also included in the recommendations. The *Akwé: Kon* guidelines were highlighted as a guide for States and the international community for any proposed development on indigenous peoples' lands, territories and resources.

20. Most of the recommendations of the Permanent Forum on traditional knowledge and access and benefit-sharing were addressed by the secretariat of the Convention on Biological Diversity. For example, a major accomplishment achieved at the tenth Conference of the Parties to the Convention on Biological Diversity was the adoption, following six years of intense negotiations, of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity. Indigenous peoples participated throughout the negotiations. Also at its tenth meeting, the Conference of the Parties negotiated and adopted the Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biological Diversity (the *Tkarihwaié: ri* code of ethical conduct), and States were invited to make use of its elements to guide the developments of models of codes of ethical conduct for research, access to, use, exchange and management of information concerning traditional knowledge. The code also provides for the prior informed consent and/or approval and involvement of indigenous peoples.

Forests

21. The recommendations of the Permanent Forum focused on indigenous peoples' rights to forests, biofuel plantations and carbon funds. The Permanent Forum noted that the current framework for reducing emissions from deforestation and degradation is not supported by most indigenous peoples because of its centralized top-down management of forests, which undermines indigenous peoples' rights (see E/C.19/2008/13, para. 45). In regard to the political focus on forests, stimulated by current policy debates on reducing emissions from deforestation and degradation, under the United Nations Framework Convention on Climate Change, the Permanent Forum requested that the debates be used towards securing the rights of indigenous peoples living in forests. Further, indigenous peoples should be rewarded for their historical stewardship role and their continuing conservation and sustainable use of forests. In order to directly benefit indigenous peoples, new proposals for avoiding deforestation or reduced emissions from deforestation must address the need for global and national policy reforms and be guided by the United Nations Declaration on the Rights of Indigenous Peoples. The Permanent Forum

also recommended that for indigenous peoples who did not wish to participate in projects on reducing emissions from deforestation and degradation, their choice should be respected. The principle of free, prior and informed consent should be central when making decisions about forest policies and programmes for indigenous peoples (E/2008/43, para. 44). Many of those recommendations are ongoing.

Climate change

22. Indigenous peoples have survived climate changes that have occurred over thousands of years and they continue to survive despite their high vulnerability, which is a testament to their resilience and tremendous capacity to adapt. However, that capacity is being challenged in the face of accelerating climate change and the manner in which such issues are addressed at the global and national levels. Further, indigenous peoples have not always been able to participate in meetings on climate change. It was for this reason that the Permanent Forum adopted the special theme, "Climate change, biocultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges", for its seventh session. Major consideration was given to climate change and mitigation measures, especially during the seventh, eighth and ninth sessions, in response to the fact that climate change was capturing the attention of the world community and there was heightened awareness of global warming being caused by greenhouse gas emissions.

23. There were a number of recommendations made at the seventh session that focused on the participation of indigenous peoples in meetings on climate change and the need to provide support and funds for climate change adaptation and mitigation measures. Other recommendations included migration management solutions for indigenous peoples displaced from their lands and territories due to the impacts of climate change and environmental degradation. The Permanent Forum called on States to ensure that policy support, technical assistance, funding and capacity-building activities be provided to indigenous peoples in order to enable them to implement effective mitigation and adaptation strategies. Some States and indigenous peoples' organizations reported that they were supporting indigenous peoples projects for sustainable conservation and sharing experiences, lessons learned, aspirations and strategies in dealing with climate change. Other recommendations called for strengthening links between climate change, biodiversity and cultural diversity under the Convention on Biological Diversity or the United Nations Framework Convention on Climate Change in order to ensure the participation of indigenous peoples.

Conservation and protected areas

24. The Permanent Forum made five recommendations related to environmental conservation and protected areas, which included protecting sacred places and ceremonial sites, the need for social impact assessments and the recognition that the free, prior and informed consent of indigenous peoples was necessary before declaring a given area as being protected, taking into account impacts on indigenous peoples and their communities. In its report to the Permanent Forum, UNESCO suggested that it would be helpful if more indigenous peoples' organizations entered into formal relations with UNESCO in order to develop partnerships with its local and indigenous knowledge systems project that aims to empower local and

indigenous peoples in biodiversity governance, in particular in protected areas.[2] At its ninth session, the Permanent Forum reiterated its concerns about conservation efforts, including the designation of national parks, biosphere reserves and world heritage sites, which frequently led to the displacement of indigenous peoples from their traditional lands and territories (see E/2010/43, para. 131). A Permanent Forum member was able to attend the thirty-fourth session of the UNESCO World Heritage Committee held in Brazil in 2010; the issue remains ongoing.

Indigenous peoples' participation

25. The Permanent Forum made a number of recommendations to States and United Nations agencies to support indigenous peoples' participation in meetings on the environment (see E/2003/43, paras. 47, 49, 55 and 61). As a result, indigenous peoples' participation in meetings has continued to grow over the past few years, with representatives of indigenous organizations attending meetings of the United Nations Framework Convention on Climate Change, United Nations Forum on Forests, Stockholm Convention on Persistent Organic Pollutions, Ramsar Convention on Wetlands, Convention on the Conservation of Migratory Species of Wild Animals, Convention on International Trade in Endangered Species of Wild Flora and Fauna, United Nations Convention to Combat Desertification and the Governing Council of the United Nations Environment Programme (UNEP). The presence of indigenous peoples at such meetings has been growing, particularly at meetings of the United Nations Framework Convention on Climate Change and the United Nations Forum on Forests. While indigenous peoples have been more visible at those meetings, however, their concerns have often been marginalized, especially relating to policymaking issues. Indigenous peoples have also had a strong presence at meetings of the Convention on Biological Diversity (for example, concerning article 8 (j) on traditional knowledge and access and benefit-sharing) and the World Intellectual Property Organization (Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore). Both the Convention on Biological Diversity and the World Intellectual Property Organization have funds to support the participation of indigenous peoples.

Other recommendations

26. There was a small number of recommendations calling on States to recognize indigenous peoples' rights to fishing, hunting and reindeer herding. The Permanent Forum also made recommendations to United Nations agencies dealing with environmental matters to adopt an indigenous peoples' policy and ensure the full participation of indigenous peoples in the formulation of their policies, programmes and projects. A few United Nations agencies have adopted policies and others have drafted policies that are awaiting endorsement by senior management. A number of Permanent Forum recommendations related to reports, meetings and technical workshops on environmental issues such as climate change, forests, pollution, traditional knowledge (see E/C.19/2006/2; E/C.19/2007/10) and access and benefit-sharing (see E/C.19/2007/8), some of which have been implemented. Most of the reports can be found on the website of the Permanent Forum.[3] The reports and workshops provide in-depth understanding of issues, and the relevant papers

[2] See http://www.un.org/esa/socdev/unpfii/en/session_ninth.html.

[3] http://www.un.org/esa/socdev/unpfii/.

submitted by experts provide analyses of issues within their respective regions in relation to indigenous peoples. The Permanent Forum also called upon the European Union to re-consider its seal product import ban, which has an impact on the livelihood of the Inuit people of the Arctic. The European Union was also requested to enter into direct and meaningful dialogue with the Inuit Circumpolar Council to discuss ways to move forward on the issue.

27. Table 2 provides a breakdown by session of the number of recommendations made and implemented concerning the environment.

Table 2
Implementation of the recommendations of the Permanent Forum on the environment

	Recommendations		
Permanent Forum session	*Total made*	*Implemented (ongoing or completed)*[a]	*Implementation not initiated or reporting not received*
Second	20	2	18
Third	11	6	5
Fourth	2	1	1
Fifth	6	2	4
Sixth	22	18	4
Seventh	13	11	2
Eighth	9	8	1
Total	**83**	**48**	**35**

[a] A recommendation is noted as being implemented even if only a single State or agency reports to the Permanent Forum as having acted upon it.

United Nations Conference on Sustainable Development, 2012

28. The United Nations Conference on Sustainable Development to be held in Brazil in 2012 (Rio+20) will focus on the global transition to a low-carbon, resource-efficient green economy, which is seen as crucial for sustainable development and for the attainment of the Millennium Development Goals because it not only promotes economic growth and lessens inequality but also reduces environmental risks and ecological scarcities and hence improves human well-being. The Green Economy Initiative, launched by UNEP in 2008 aims to demonstrate how to revive economies and create lasting employment while tackling environmental challenges. In May 2010, indigenous peoples attending the first conference on sustainable development pointed out that discussions around a green economy should not distract from addressing the root causes of the global economic and ecological crisis. They also stated that numerous agreements reached in multilateral processes had already conceptualized and defined sustainable development and that many of those agreements had not been effectively implemented. Further, such development, whether it is called green or sustainable, should integrate all the dimensions of development, including economic, social, political, ecological, cultural and spiritual considerations. Indigenous peoples also expressed concern that in the design and promotion of the green economy there was a need to be mindful of

potential human rights implications, especially when hydroelectric dams and nuclear power plants were considered to be sources of clean and renewable energy. There were also concerns about human rights violations related to the building of dams, the mining of uranium for nuclear power plants and the dumping of radioactive waste in indigenous peoples' territories, all of which affect indigenous peoples' livelihoods. Hence, this was an area where indigenous peoples could make valuable contributions.

C. Free, prior and informed consent

29. Section C provides a brief background on the principle of free, prior and informed consent and recognition of the principle at the international level. It also summarizes the relevant recommendations made by the Permanent Forum on the issue and provides details on the implementation process.

30. The common understanding of the principle of free, prior and informed consent is that consent should be given freely, without coercion, intimidation or manipulation (free); sought sufficiently in advance of final authorization and implementation of activities (prior); and founded upon an understanding of the full range of issues entailed by the activity or decision in question (informed).

Background and recognition at the international level

31. Free, prior and informed consent is covered in the United Nations Declaration on the Rights of Indigenous Peoples in relation to the relocation of indigenous peoples from their lands and territories (article 10); redress with respect to the appropriation of their cultural, intellectual, religious and spiritual property (article 11, para. 2); obtaining such consent before adopting and implementing legislative and administrative measures that affect indigenous peoples (article 19); redress for their lands or resources taken without their consent (article 28, para. 1); disposal of hazardous materials in their territories (article 29, para. 2); and obtaining of such consent prior to the approval of development projects affecting their lands or territories and other resources (article 32, para. 2).

32. The Permanent Forum has made a number of recommendations on free, prior and informed consent to the bodies and organizations of the United Nations system, States and State-owned corporations, international financial institutions and the private sector.

Recommendations of the Permanent Forum for bodies and organizations of the United Nations system on free, prior and informed consent

33. The recommendations include to:

- Undertake an analysis of the implementation of free, prior and informed consent and related mechanisms
- Review policies, programmes and approaches with indigenous peoples in order to ensure respect for free, prior and informed consent and to create a true partnership for development

- Undertake an analysis of the implementation of free, prior and informed consent and related mechanisms regarding projects on indigenous peoples' lands and territories and submit the analysis to the Permanent Forum
- Ensure that free, prior and informed consent form the basis of the policies on forests under the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries and of United Nations programmes to facilitate the resettlement, reintegration and migration of indigenous peoples affected by climate change
- Respect the principle of free, prior and informed consent as critical for a free and universal civil registration of indigenous peoples and as important for all programmes related to the prevention and treatments of HIV/AIDS
- Continue to promote the political development and implementation of free, prior and informed consent, taking into account the development perspectives, respect for human rights and juridical pluralism of indigenous peoples

Recommendations of the Permanent Forum for States and State-owned corporations on free, prior and informed consent

34. The recommendations include to:

- Adhere to the principle of free, prior and informed consent in all matters affecting indigenous peoples
- Follow the principle of free, prior and informed consent and related mechanisms regarding projects involving indigenous peoples' territories, land and natural resources and analyse the implementation of the principle and mechanisms. The Permanent Forum called upon States that had granted leases, concessions and licences on indigenous peoples' territories for projects related to logging, minerals, oil, gas and water without proper consultation and without respecting the free, prior and informed consent of the indigenous peoples concerned, to review those arrangements and to address the complaints raised by indigenous peoples in those territories. States and State-owned corporations were also urged to consult and cooperate with indigenous peoples concerned in order to obtain their consent before the approval of any policies, plans and projects affecting their lands or territories and other resources
- Support free and universal civil registration on the basis of the free, prior and informed consent of indigenous peoples
- Address situations of violence and abuse within indigenous communities on a non-discriminatory basis and in accordance with human rights standards and the principle of free, prior and informed consent
- Apply the rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples throughout their operational frameworks pursuant to the Programme of Action for the Second International Decade of the World's Indigenous People, in particular its objective on free, prior and informed consent by indigenous peoples
- Implement ILO Convention No. 169 by training public officials/civil servants to respect and fulfil its provisions. It is crucial that indigenous peoples be fully

informed of the consequences of the use and exploitation of natural resources in their lands and territories through consultations, under the principle of free, prior and informed consent

- Intensify the dialogue among Governments in Africa under the supervision of the African Union, with emphasis on poverty eradication based on free, prior and informed consent
- Ensure that Asian States establish full transparency regarding projects on indigenous territories by States and corporations, through the implementation of the principle of free, prior and informed consent, in accordance with the customary laws and practices of the respective indigenous peoples
- Ensure the full and effective participation and free, prior and informed consent of indigenous peoples in all programmes related to HIV/AIDS in indigenous communities
- Follow the principle of free, prior and informed consent at all levels and take into account both the Fundamental Principles of Official Statistics, as established by the Statistical Commission, and provisions on human rights and fundamental freedoms, data protection regulations and privacy guarantees, including respect for confidentiality. For indigenous peoples living in voluntary isolation, data-collection exercises should not be used to establish forced contact

Implementation by States and State-owned corporations

35. A number of States have implemented policies that include the consultation and participation of indigenous peoples in programmes and projects that affect them. In Argentina, following the first national collection of data concerning indigenous peoples, which was undertaken in 2001, a more in-depth survey, the supplementary survey of indigenous peoples 2004-2005, was carried out. Indigenous peoples participated in the design of the survey and in the various phases of the operational process, and provided assistance with the use of local indigenous languages (see E/C.19/2006/4, paras. 69-80).

36. The Government of Colombia believes that the process of prior consultation is a prerequisite for the implementation of projects, legislative initiatives or administrative acts that have an impact on areas where there are indigenous peoples. The overall aim of prior consultation is to provide an opportunity for both the local indigenous peoples impacted by the project, construction work or activity and the relevant company to engage in direct dialogue on the potential effects and impacts of the activities and on reaching a consensus or agreement for mitigating and/or offsetting the impacts. Such prior consultation is required in two circumstances: when projects include the extraction and exploitation of natural resources and when projects include seismic exploration in the oil and gas sectors. The requirement for prior consultation is based on decree 1320 of 15 July 1998 (*Diario Oficial No. 43.340*).

37. Chapter II of the basic law on indigenous peoples and communities of the Bolivarian Republic of Venezuela (*Ley Orgánica de los Pueblos y Comunidades Indígenas de Venezuela*) is devoted to the right to prior informed consent. It establishes a series of guidelines for its due application, guaranteeing indigenous peoples and their communities respect for their institutions and authorities

throughout the consultation process. Most importantly, the chapter makes prior and informed consent binding, establishing it as an essential requirement for conducting any activity that might have a direct or indirect impact on indigenous communities or peoples.

38. The theoretical framework for Spain's strategy for cooperation with indigenous peoples includes the basic principles for indigenous peoples' right to free, prior and informed consent, including the right to reject proposals for development and other types of cooperation projects and activities, particularly those which affect their lands and territories.[4]

39. Article 57, paragraph 7, of the Constitution of Ecuador guarantees the right to free, prior and informed consultation on plans and programmes on protection, exploitation and commercialization of resources in indigenous territories that affect the environment or cultures of indigenous peoples. Indigenous peoples also have a right to the benefits from such projects and to receive indemnization for any social, cultural and environmental damages.

40. The 2009 Constitution of the Plurinational State of Bolivia (article 30, section II, paras. 15 and 16) states that indigenous peoples have the right to be consulted following adequate procedures through their institutions, when legislative or administrative measures affect them, including the exploitation of natural resources in indigenous peoples' territories. Indigenous peoples also have a right to the benefits arising from the exploitation of the natural resources in their territories.

41. In May 2010, the Peruvian Congress approved a law on prior consultation for indigenous peoples. The law stipulates that during the consultation process, indigenous peoples are expected to participate through their institutional and representative organizations established in accordance with their own uses and customs.[5]

42. In some countries, there are more explicit references to free, prior and informed consent. In the Philippines, the Indigenous Peoples' Rights Act requires a higher degree of public involvement in decision-making for projects implemented within indigenous peoples' ancestral lands and domains that affect the lives of indigenous peoples.[6] The Act requires the project proponent to obtain the free, prior and informed consent of the affected community, in accordance with prescribed procedures, before the project can be carried out. However, the recent Joint Administrative Order No. 1 2005 allows for some exemptions.

43. Canada has stated that a broad and inclusive policy framework on free, prior and informed consent is needed to address the interests and needs of all parties, indigenous and non-indigenous. It has also stated that free, prior and informed consent is an important part of ensuring indigenous peoples' participation in development and decision-making and of ensuring the fair and equitable balancing of interests in development projects. Positive examples of free, prior and informed consent in practice in Canada include the Nunavut Final Agreement, 1993, which stipulates that the consent of designated or regional Inuit organizations is required

[4] *Estrategia de la Cooperación Española con los Pueblos Indígenas, Ministerio de Asuntos Exteriores y de Cooperación, 2007.*

[5] *Ley del Derecho a la Consulta Previa a los Pueblos Indígenas u Originarios reconocido en el Convenio No. 169 de la OIT.*

[6] Tebtebba, *Indigenous Perspectives*, vol. 7, No. 2 (2005), p. 20.

for entry and access to Nunavut. Consent is only required under the agreement in cases where indigenous peoples' titles to land have been established. More recently, the Yukon Oil and Gas Act, 2002, and the Kaska-Yukon Government Bilateral Agreement, 2003, also enshrined free, prior and informed consent into Canadian law.

44. In Australia, the Aboriginal Land Rights (Northern Territory) Act 1976 requires that indigenous peoples must grant their consent for their ancestral lands to be used and for the transfer of those lands to others. The Environment Protection and Biodiversity Conservation Act, 1999, also requires consultations with indigenous peoples prior to the commencement of a project. Further, its associated Environment Protection and Biodiversity Conservation Regulations, 2000, state that informed consent must be sought from indigenous peoples if biological resources are to be accessed during a project.

45. The Crown Minerals Act 1991 of New Zealand provides special protection for Maori land, as defined by the *Te Ture Whenua Maori Act 1993*. If the land is regarded as *waahi tapu* (sacred areas), access to land by companies and other entities can only be obtained if the Maori landowners give their consent. The right to consent applies even where there may be public interest in accessing land and resources.

46. According to the Russian Federation, before exploiting lands and resources that affect the living conditions of indigenous peoples, companies must obtain the free, prior and informed consent of the indigenous peoples concerned. Indigenous peoples have the right to participate equally in negotiations through their representative institutions in order to share in the benefits. Where necessary, they should have access to legal representation to prevent their rights from being infringed upon by the illegal conduct of companies.

Recommendations of the Permanent Forum for international financial institutions on free, prior and informed consent

47. The recommendations include to:

- Adhere to the principle of free, prior and informed consent in all matters affecting indigenous peoples and ensure that free, prior and informed consent and the provisions of the United Nations Declaration on the Rights of Indigenous Peoples are integrated into policies on indigenous peoples
- Target indigenous peoples as beneficiaries of microfinancing mechanisms, with their free, prior and informed consent and support free and universal civil registration on the basis of the free, prior and informed consent of indigenous peoples
- Recommend that the World Bank revise its operational safeguard policies to be consistent with the provisions of the United Nations Declaration and that the World Bank and other multilateral development banks ensure full and effective participation of indigenous peoples in the formulation of the forthcoming indigenous peoples' guidebook and any revision to operational policy 4.10 on indigenous peoples

Implementation by international financial institutions

48. A number of international financial institutions have included free, prior and informed consent in their policies in order to ensure indigenous peoples' participation in all stages of a project cycle, not only in the planning and implementation but also in the management of resources. Free, prior and informed consent is required when the project is located on, or proposes to commercially develop, natural resources located within indigenous peoples' customary lands or when adverse impacts are expected on the livelihoods and/or cultural, ceremonial or spiritual uses that define the identity of the indigenous peoples' communities. It is also required when the project entails relocation of indigenous peoples and when the project proposes to use the cultural resources, knowledge, innovations or practices of indigenous peoples for commercial purposes. For example, the World Bank requires the borrower to engage in a process of free, prior and informed consultation.[7] In some instances, international financial institutions have established safeguard policy statements for obtaining the consent and support of indigenous peoples in development projects that affect them.

Recommendations of the Permanent Forum for the private sector on free, prior and informed consent

49. The recommendations include to:

- Adhere to and uphold the principles of free, prior and informed consent, self-determination and accountability in all matters affecting indigenous peoples in order to create a good partnership for development
- Target indigenous peoples as beneficiaries of microfinancing mechanisms, with their free, prior and informed consent

Implementation by the private sector

50. The Royal Bank of Canada has incorporated in its policy a clause on free, prior and informed consent to ensure that big business clients in the mining and energy sectors are being socially responsible by consulting with and accommodating indigenous communities affected by their operations.

51. The International Council on Mining and Metals has issued guidance on mining and indigenous peoples. In instances where free, prior and informed consent for indigenous peoples is legally provided for by national Governments, Council members are expected to comply with the law.

52. Table 3 provides a breakdown by session of the number of recommendations made and implemented concerning free, prior and informed consent.

[7] Operational Policy 4.10 — Indigenous Peoples (World Bank), para. 1.

Table 3
Implementation of the recommendations of the Permanent Forum on free, prior and informed consent

	Recommendations		
Permanent Forum session	*Total made*	*Implemented (ongoing or completed)*[a]	*Implementation not initiated or reporting not received*
First	1	1	—
Second	3	2	1
Third	2	1	1
Fourth	13	4	9
Fifth	3	3	—
Sixth	17	13	4
Seventh	6	4	2
Eighth	8	7	1
Total	**53**	**35**	**18**

[a] A recommendation is noted as being implemented even if only a single State or agency reports to the Permanent Forum as having acted upon it.

III. Conclusion and recommendations

53. The Inter-Agency Support Group plays a valuable role as a node for cooperation and coordination among agencies and as a catalyst for the implementation by agencies of the recommendations of the Permanent Forum. Establishing and maintaining contact with agencies, through both official visits by the Permanent Forum as well as informal cooperation during the sessions and throughout the year is important. The work of the focal points within the agencies is crucial to the implementation of the recommendations of the Permanent Forum. **The Permanent Forum should continue to maintain these relationships as well as to seek out new partners for cooperation.**

54. General recommendations that are not directed at a specific agency are less likely to be implemented than those that are targeted. **The Permanent Forum should continue to endeavour to make clear and measurable recommendations.**

55. The Permanent Forum devoted two sessions to the Millennium Development Goals and has made a number of recommendations in relation to the Goals. **Considering the importance of the Millennium Development Goals and the fact that the deadline of 2015 is approaching, the Permanent Forum may wish to consider a specific review of recommendations on the Goals at its twelfth session.**

56. **Considering the need to strengthen recognition of the principle of free, prior and informed consent, the Permanent Forum may wish to consider taking one of the following actions: establishing a new category in the portfolio of the members of the Permanent Forum; designating a permanent forum to write a**

broader report on the matter; and including free, prior and informed consent as a theme in one of its sessions, or as a half-day discussion.

57. **The Permanent Forum may wish to consider the recommendations of the International Expert Group Meeting on Indigenous Peoples and Forests, held from 12 to 14 January 2011.** In particular, the recommendation calls upon the General Assembly to include the full and effective participation of the Permanent Forum as well as the participation of indigenous peoples around the world in the preparation, organization and follow-up to the Rio+20 (see E/C.19/2011/5, para. 37).

58. **Concerning the International Year of Forests, the Permanent Forum may also wish to consider a further recommendation from the International Expert Group Meeting on Indigenous Peoples and Forests.** That recommendation called upon the secretariats of the United Nations Forum on Forests and of the United Nations Permanent Forum on Indigenous Issues, the Collaborative Partnership on Forests and other agencies, bodies, States and indigenous peoples' organizations to collaborate closely in order to ensure that indigenous peoples had full and effective participation in the initiatives of the United Nations Forum on Forests, in particular the commemoration of the International Year of Forests, 2011, and to emphasize the central role of indigenous peoples as stewards of many of the world's most biologically diverse forests (ibid., para. 38).